Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In The
SUPREME COURT OF THE UNITED STATES

October Term 1977

No.

77-247

HELEN FOLEY, Petitioner

v.

STATE OF NEW JERSEY, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
NEW JERSEY SUPERIOR COURT,
APPELLATE DIVISION

HELEN FOLEY, pro se
614 Morris Boulevard
Toms River, New Jersey
08753

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IN THE SUPREME COURT OF THE UNITED STATES

October Term,1977

No.

HELEN FOLEY, Petitioner

v.

STATE OF NEW JERSEY, Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE NEW JERSEY SUPERIOR COURT,
APPELLATE DIVISION

Helen Foley, pro se, respectfully requests that a writ of certiorari issue to review the decision of the New Jersey Superior Court, Appellate Division entered in the above-captioned case on February 23,1977.

OPINIONS BELOW

The orders of the Supreme Court of New Jersey dismissing the appeal and denying petition for certification, dated 17 May 1977 appear in the Appendix hereto at Appendix A1,A2.

The decision of the New Jersey Superior Court, Appellate Division, dated February 23,1977 appears in the Appendix at Appendix B.

The transcript of Contempt Hearing of petitioner before Judge George Y Schoch,A. J.S.C., Mercer County Courthouse, Trenton New Jersey on June 16,1976. (Pages 1,2, 3,7, including the finding of guilty of Contempt of Court) Appendix C

JURISDICTION

The orders of the Supreme Court of New Jersey dismissing the appeal and denying petition for certification was entered on May 17,1977 and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Where a citizen of the United States is about to be charged with contempt of court (not in the presence of the court) in a State wherein the court rules entitle her to receive notice of such charge by an order to show cause or order for arrest, does the disregarding of such rule and the noticing of such citizen by letter from the hearing judge violate her right to notice under the due process clause of the Fourteenth Amend-

ment to the United States Constitution?

2. Under the circumstances of 1. above, does the conviction of the defendant at such hearing (in absentia) violate the requirements of the due process clause of the Fourteenth Amendment in that she was not given an opportunity to be heard ?

CONSTITUTIONAL AND COURT RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "; nor shall any State deprive any person of life,liberty,or property, without due process of law;..."

"New Jersey Court Rules:

1:10-1 Contempt in Presence of Court

Contempt in the actual presence of a judge may be adjudged summarily by the judge without notice or order to show

cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt.

1:10-2 Institution of Proceedings

Every other summary proceedings to punish for contempt shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of ____ Charged with Contempt of Court."

STATEMENT OF THE CASE

This is a petition for a writ of certiorari to review a decision of the Superior Court of New Jersey, Appellate Division affirming the decision of Judge George Y.Schoch of the Superior Court of New Jersey who found petitioner guilty of contempt

of court at an (in absentia)hearing on 16 June 1976 and fined her $25.00 on 30 June 1976. (Appendix C , page 26)

The matter stems from a parking ticket returnable in the Borough of Princeton, New Jersey which was returned, with check, and with certain words or resemblances to words written on both sides. On 5 April 1976 petitioner appeared in Princeton Borough Court in answer to correspondence from the court clerk at which time and place she was notified by Municipal Judge Philip S.Carchman that she would be charged with contempt of court for the language on the ticket. When asked if she pleaded guilty or not guilty she said not guilty.

On 20 May 1976 she received a letter from Judge Schoch (Appendix D) directing her to appear and answer charges of contempt of court by Judge Carchman.

On 16 June 1976 she was tried and found guilty of contempt of court (in absentia) and without Judge Carchman appearing as a witness.

Having heard in the press that a bench warrant was being issued for her arrest she appeared before Judge Schoch on 30 June 1976 with counsel under the impression that it was the trial instead of the sentencing. She was fined $25.00 which was paid.

On 30 July 1976 she filed a Notice of Appeal to the Appellate Division Of the Superior Court. On 23 February 1977 the decision of the Appellate Division was entered affirming the finding of guilty.

On 15 March 1977 petitioner filed a Notice of Appeal and Notice of Petition for Certification to the Supreme Court of New Jersey which were denied on 17 May 1977.

Petitioner now petitions this Court for a writ of certiorari to review the decision of the Superior Court, Appellate Division.

REASONS FOR GRANTING THE WRIT

I WHERE A CITIZEN, ABOUT TO BE CHARGED WITH CONTEMPT OF COURT (NOT IN THE PRESENCE OF THE COURT) IS ENTITLED BY THE STATE COURT RULES TO RECEIVE NOTICE OF SUCH CHARGE BY ORDER OF ARREST OR AN ORDER TO SHOW CAUSE, THE NOTICING OF SUCH INDIVIDUAL BY LETTER OF THE HEARING JUDGE IS A VIOLATION OF HER RIGHT TO NOTICE UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

New Jersey Court Rule 1:10-1 states:

> "1:10-1 Contempt in Presence of Court
> Contempt in the actual presence of a judge may be adjudged summarily without notice or order to show cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt."

The letter of the hearing judge (Appendix D) states, " I have been advised by Judge Carchman that he has charged you

with Contempt of Court..."

It is patent then that the contempt charged is not one in the presence of the court or the municipal judge would have disposed of it summarily in his own court.

Therefore Rule 1:10-2 must apply, which states:

" 1:10-2. Institution of Proceedings

Every other summary proceeding to punish for contempt shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of _____ Charged with Contempt of Court."

The meaning of this rule was confirmed and the importance of its procedural aspect was emphasized in Lusardi v. Curtis Point Prop. Owners 138 N.J. Super 44 (App. Div.1975) wherein the court stated at 49:

"That the proceeding below was patently deficient for the purpose of a contempt citation and incapable of sustaining a judgement of contempt is manifest... A contempt proceeding may only be instituted by the court "upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious."

And in Zoning Board of Adjustment of Green Brook v. Datchko 142 N.J. Super. 501 (App. Div. 1976) it states at 509:

" A contempt conviction under R. 1:10-2 may not be predicated on the provisions of this order to show cause. (involving supplementary relief to a litigant) The proceeding under that rule is penal in nature. A defendant charged thereunder must be afforded all of the rights of one charged with a crime except the right to indictment and to trial by jury."

(emphasis added)

In the instant case notice was instituted by a letter of 19 May 1976 from the trial judge George Y. Schoch (Appendix D) Because the matter is penal in nature

(GreenBrook,supra) petitioner contends that the rule must be strictly complied with, in her favor.

> "Penal statutes and regulations must be strictly construed."
>
> State v. Pinto 129 N.J.L.255, 258

The matter is similar to the "statutory entitlement" issue in Goldberg v. Kelly 397 U.S. 254 (1969) which, although not penal in nature, did involve a due process question of whether an evidentiary hearing was required before a welfare recipient's benefits were terminated by the State. It states at 262:

> "Such benefits are a matter of statutory entitlement for persons qualied to receive them. (8) Their termination involves state action that adjudicates important rights.
>
> Note (8) in part: "It may be realistic today to regard welfare entitlements as more like "property" than a "gratuity"

and at 267:

> "The fundamental requisite of due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385,394 (1914) The hearing must be "at a meaningful time and in a meaningful manner". Armstrong v. Manzo, 380 U.S. 545,552 (1965) In the present context these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally."

And in New Jersey the rule making power of the Supreme Court in the procedural area is not subordinate to any overriding legislation. In Winberry v. Salisbury 5 N.J. 240,255 (1950) it states:

> "We therefore conclude that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration as such."

Petitioner contends that an entitlement under the Court Rules is the equivalent of one under a State statute and because it has to do with procedural rights of a

matter which is "penal in nature" it must be strictly construed. Therefore the failure to institute this proceeding by an order to show cause was so deficient that her right to notice under the due process clause of the Fourteenth Amendment was violated.

II THE HOLDING OF A TRIAL UNDER CIRCUMSTANCES OF I ABOVE IN WHICH PETIONER WAS CONVICTED OF CONTEMPT OF COURT (IN ABSENTIA) FURTHER VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AS IT RELATES TO THE OPPORTUNITY TO BE HEARD IN THAT SHE WAS NOT AFFORDED AN OPPORTUNITY TO PRESENT EVIDENCE IN HER OWN DEFENSE; HER ABSENCE BEING PROPER UNDER THE PERTINENT RULE OF PROCEDURE OF R. 1:10-2.

In Hyman v. Muller 1 N.J. 124(1948 it states at 129:

> "The essential elements of"due process of law" as guaranteed by the Fourteenth Amendment of the Federal Constitution, are appropriate notice of the judicial action and adequate opportunity to be heard. Blackmer v. United States, 284 U.S. 421, 52 S.Ct. 252,76 L.Ed.375(1932).

> Procedural due process contemplates a trial according to some settled course of judicial proceedings.... It is designed to shield the litigant against arbitrary action in disregard of essential right and justice. It means in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights. Westervelt v. Gregg 12N.Y. 202,209; Brown v. New Jersey, 175 U.S. 172,2o S.Ct. 77, 44L.Ed. 119 (1899)."

The absence of the petitioner from the trial was not voluntary and wilful in the sense that it warranted her being tried in absentia because she had not been properly served according to the Rules of Court, and the matter being penal in nature the rules must be strictly complied with in petitioner's favor. Therefore, the holding of such trial in her absence (without the proper procedure relative to notice having been followed) violated her right to an opportunity to be heard under the Fourteenth Amendment.

And again in Hyman (supra) at 129 it states:

> "Due process in judicial proceedings implies action in conformity with the general law, based upon evidence, and after a full hearing upon notice to the parties affected and opportunity to be heard. Judgment without such citation and opportunity to be heard lacks the very attributes of a judicial determination. Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330,78 L.Ed.674 (1933). There is no hearing when the affected party has not the means of knowing what evidence is offered or considered and is not afforded an opportunity to test, explain or refute it." (emphasis added)

The reasons for the setting forth of such procedure in the Rules dealing with contempt, not in the presence of the court are expressed by the New Jersey Supreme Court in In re Contempt of Carton 48 N.J. 9,22:

> "The reasons are, first, that there is no need to deal so abruptly with an offense which does not constitute an obstruction within the courtroom itself, and second, that since the court does not know by its own senses all of the facts constituting the

> offense,there must be a trial to adduce them. R.R. 4:87-2 (source of R:1:10-2) and 4 vest the authority to institute a penal prosecution exclusively in a judge of the offended court, rather than in a litigant, and provide for clear notice of the nature of the proceedings and for safeguards appropriate in a prosecution of that kind."

In the instant case, petitioner had not been afforded an opportunity to present evidence in her own defense, the most important of which would have been on that issue of intent to commit contempt. In Lusardi (supra) at 49, it states:

> "We observe, for instance, that demonstration of a mens rea, wilful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt, but irrelevant in a proceeding designed simply to enforce a judgement on a litigant's behalf."

As to this point, petitioner contends that the evidence as presented at the trial in her absence, standing alone- words addressed to no one in particular on a paid

parking ticket, which, as far as any lay member of the public could know would ever be seen by anyone except a clerk in the administrative process- does not prove the necessary mens rea beyond a reasonable doubt.

As further evidence that her absence from the trial was based on principle and faith in the essential fairness of the American judicial system is that she did appear with counsel at the 30 June hearing under the mistaken belief that she was appearing for trial, after having learned through the press that a bench warrant for her arrest was being issued. It was not until some time after 30 June that she realized that it had been a hearing for sentencing only.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted

Helen Foley, pro se

Helen Foley

Dated 11 August 1977

APPENDIX A-1

SUPREME COURT OF NEW JERSEY

13,559 SEPTEMBER TERM 1976

IN THE MATTER OF	:	
HELEN FOLEY	:	ORDER DISMISSING APPEAL
Plaintiff- Appellant	:	

This matter having been duly presented to the Court, it is ORDERED that the appeal is dismissed pursuant to Rule 2: 12-9.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 17th day of May, 1977.

Florence R. Peskoe
Clerk

A TRUE COPY
Florence R.Peskoe
Clerk

Filed
May 17,1977
Florence R.
Peskoe

BEST COPY AVAILABLE

APPENDIX A-2

SUPREME COURT OF NEW JERSEY
C-712 SEPTEMBER TERM 1976

IN THE MATTER OF HELEN FOLEY	:	ON PETITION FOR CERTIFICATION
PLAINTIFF-PETITIONER	:	

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereby ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Worrall F. Mountain, Presiding Justice, at Trenton, this 17th day of May,1977.

Florence R. Peskoe
Clerk

A TRUE COPY

Filed
May17,1977

Florence R. Peskoe
Clerk

Florence R. Peskoe

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4349-75

IN THE MATTER OF
HELEN FOLEY,

CHARGED WITH CONTEMPT OF COURT.

Submitted February 8,1977 -Decided
Feb.23,1977

Before Judges Halpern, Allcorn and
Botter

On appeal from Superior Court, Law Division, Mercer County.

Mrs. Helen T. Foley, appellant, pro se.

Mr. William F. Hyland, Attorney General of New Jersey, attorney for respondent (Mr. Robert E. Rochford, Deputy Attorney General, of counsel; Mr. Daniel A. Swick Deputy Attorney General, on the brief)

PER CURIAM

Appellant was found guilty of contempt of court and was fined $25.00. On this appeal she contends that she was not afforded appropriate notice and an opportunity to be heard. She also contends that the proofs did not establish her guilt beyond a reasonable doubt.

Clearly, appellant's conduct in inscribing a parking ticket with an obscene

ity and other disparaging remarks, which she sent to the municipal court, accompanied by a $4.00 check, constituted a contempt of court. State v. Sax, 139 N.J. Super. 157(App. Div. 1976). This was followed by additional insults contained in a letter addressed to the judge before whom the contempt hearing was scheduled, in which letter she stated that she would not appear at the scheduled hearing.

In these circumstances we find no merit to appellant's contentions on this appeal, apart from the fact that these contentions were not urged below by appellant's attorney who appeared with her at sentencing. R. 2:10-2.

Affirmed.

A TRUE COPY

Elizabeth McLaughlin
Clerk

APPENDIX C Page 1

MAGISTRATES COURT
BOROUGH OF PRINCETON
MERCER COUNTY
NEW JERSEY
(A-4349-75)

STATE OF NEW JERSEY :

vs :

HELEN FOLEY, :
Defendant.

:

TRANSCRIPT
OF
CONTEMPT HEARING

B E F O R E:

HONORABLE GEORGE Y. SCHOCH, A.J.S.C
Mercer County Courthouse
Trenton, New Jersey

June 16,1976

A P P E A R A N C E S:

Mason,Griffin & Pierson
by: BENJAMIN N. CITTADINO, ESQ.
For the State of New Jersey

NO APPEARANCE
For Defendant

Miriam M. Bard, C.S.R.
Official Court Reporter
Trenton, N.J.

I N D E X

WITNESSES	DIRECT	CROSS
ANN COLUCCIO		
By Mr. Cittadino	3	
The Court	4	

E X H I B I T S

NUMBER	DESCRIPTION	EVID.
J-1	Letter	2
S-1	Ticket	3
S-2	Check	3

THE COURT: We have the matter of State vs. Helen T. Foley, charged with Contempt of Court in the Municipal Court in the Bor ough of Princeton.

I wrote Mrs. Foley on May19, 1976, advising her that this matter would be heard this morning at 9.00. Is Mrs. Foley in the Courtroom?

(There was no response)

THE COURT: That doesn't surprise me in light of the letter of May 21,1976, which indicates, among other things, that she is not coming.

I will have this letter marked as Exhibit J-1.

(The letter referred to above was received and marked J-1 in Evidence as of this date)

THE COURT: Would you be good enough to proceed and present whatever evidence you have of the Contempt, please? I will then take it from there.

MR. CIIADINO: Very well, your Honor.

We would just call Ann Coluccio.

ANN COLUCCIO, a witness, called on behalf of the State.

Mrs. Foley, in the Court's opinion, deliberately took this method of invoking this kind of procedure.

I have received other correspondence from her which was prior to this instance, but subsequent to my finding certain college students guilty of contempt for similar types of activities, apparently all of the Borough of Princeton's Municipal Court and Mrs. Foley took umbrage in my rulings in those cases and I think that the language where she says on the ticket: "Fine me $50.00 I am older and fatter than the long-haired hippies."

There is an indication to the Court that she deliberately invoked this procedure. That conclusion is substantiated of the contents of her letter of May 21 in which she advised the Court that she had no intention of appearing and that suggested the Court engage in certain activities with the letter which is against nature. Consequently I find Mrs. Foley guilty of Contempt.

I will postpone sentencing until she is before me and a bench warrant will be issued for her arrest.

(emphasis added)

APPENDIX D

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

GEORGE Y SCHOCH
Assignment Judge

Mercer, Hunterdon and Somerset Counties

May 19,1976

Mrs. Helen Foley
1432 Riverside Drive
Trenton, New Jersey 08618

Dear Mrs. Foley:

I have been advised by Judge Carchman that he has charged you with Contempt of Court as a result of your written comments on the parking ticket you received.

Please be advised that I will hear this matter on Wednesday, June 16,1976, at 9:00 a.m. and direct that you appear in my courtroom at that time. If you are represented by counsel or intend to be, please notify your attorney of this hearing date.

Very truly yours,

George Y. Schoch
A.J.S.C.

GYS:mt
CC: Judge Philip S. Carchman

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of August 1977 three copies of the petition for Writ of Certiorari were mailed at the Trenton Post Office, Trenton, New Jersey, first class mail to the following: William F. Hyland, Attorney General of the State of New Jersey State House Annex Trenton, New Jersey 08625, Court Clerk, Borough of Princeton, Princeton Borough Hall, Princeton, New Jersey 08540 and Benjamin N. Cittadino, Esq., Mason, Griffin &Pierson 201 Nassau Street Princeton, New Jersey 08540

Helen Foley, pro se

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